

1 **SECTION 100.** 854.08 (5) (title) of the statutes is repealed and recreated to read:

2 854.08 (5) (title) PROPERTY UNDER GUARDIANSHIP, CONSERVATORSHIP, OR POWER OF
3 ATTORNEY.

4 **SECTION 101.** 854.08 (5) of the statutes is renumbered 854.08 (5) (b) and
5 amended to read:

6 854.08 (5) (b) Subject to pars. (c) and (d) and sub. (6), if property that is the
7 subject of a specific gift is sold or mortgaged by a guardian ~~or~~ conservator, or agent
8 of the person who executed the governing instrument, or if a condemnation award
9 or insurance proceeds are paid to a guardian ~~or~~ conservator, or agent, the specific
10 beneficiary has the right to a general pecuniary transfer equivalent to the proceeds
11 of the sale ~~or the~~ mortgage, condemnation award, or ~~the~~ insurance proceeds, reduced
12 by any amount expended or incurred to restore or repair the property or to reduce
13 the indebtedness on the mortgage, if the funds are available under the governing
14 instrument. ~~This provision~~

15 (c) Paragraph (b) does not apply with respect to a guardian or conservator if the
16 person who executed the governing instrument, subsequent to the sale ~~or~~ mortgage,
17 award, or receipt of insurance proceeds, is adjudicated competent and survives such
18 adjudication for a period of one year; but in such event ~~a sale by a guardian or~~
19 ~~conservator within 2 years of that person's death is a sale by that person for purposes~~
20 of sub. (2) the rights of the specific beneficiary shall be determined as though the
21 proceeds were paid to the owner under sub. (2), (3), or (4).

22 **SECTION 102.** 854.08 (5) (a) of the statutes is created to read:

23 854.08 (5) (a) In this subsection, "agent" means an agent under a durable power
24 of attorney, as defined in s. 243.07 (1) (a).

25 **SECTION 103.** 854.08 (5) (d) of the statutes is created to read:

1 854.08 (5) (d) Paragraph (b) does not apply with respect to an agent or trustee
2 if the person who executed the governing instrument is competent at the time of the
3 sale, mortgage, award, or receipt of insurance proceeds but in such event the rights
4 of the specific beneficiary shall be determined as though the proceeds were paid to
5 the owner under sub. (2), (3), or (4).

6 **SECTION 104.** 854.08 (6) (a) 1. of the statutes is amended to read:

7 854.08 (6) (a) 1. The person who executed the governing instrument, either
8 expressly or as construed from extrinsic had a contrary intent. Extrinsic evidence,
9 shows the intent that a transfer fail under the particular circumstances may be used
10 to construe that intent.

11 **SECTION 105.** 854.08 (6) (a) 2. of the statutes is amended to read:

12 854.08 (6) (a) 2. The person who executed the governing instrument gives
13 property during the person's lifetime to the specific beneficiary with the intent of
14 satisfying the specific gift. ~~Extrinsic evidence may be used to construe that intent,~~
15 and the requirement under s. 854.09 (1) is satisfied.

16 **SECTION 106.** 854.115 of the statutes is created to read:

17 **854.115 Valuation of distributed assets. (1) VALUATION OF IN-KIND**
18 **DISTRIBUTIONS AS OF DATE OF DISTRIBUTION.** A distribution of property in kind to a
19 distributee who receives a pecuniary transfer, a dollar amount fixed by formula or
20 otherwise, or a fractional share in a group of assets shall be made on the basis of the
21 fair market value of the property on the date of distribution. This subsection applies
22 to distributions under a governing instrument or under a statute, except that
23 distributions under a governing instrument are subject to subs. (2) and (3).

24 **(2) EXCEPTION IF GOVERNING INSTRUMENT PROVIDES OTHERWISE.** Subject to sub.
25 (3), if the distribution is made under a governing instrument, and the instrument

1 requires or permits a different value to be used, all assets available for distribution,
2 including cash, shall be distributed so that the assets distributed to satisfy the
3 transfer fairly represent the net appreciation or depreciation in the value of the
4 available property on the date of the distribution.

since the date of death

5 (3) CONTRARY INTENT. (a) This section does not apply if the distribution is made
6 under a governing instrument and the person who executed the governing
7 instrument had a contrary intent. Extrinsic evidence may be used to construe the
8 contrary intent.

9 (b) A provision in a governing instrument that the personal representative or
10 other fiduciary may fix values for the purpose of distribution does not of itself
11 constitute authorization to fix a value other than fair market value on the date of
12 distribution.

13 SECTION 107. 854.12 of the statutes is created to read:

14 **854.12 Debt to transferor. (1) HEIR UNDER INTESTACY.** (a) If an heir owes a
15 debt to the decedent, the amount of the indebtedness shall be offset against the
16 intestate share of the debtor heir.

17 (b) In contesting an offset under par. (a), the debtor heir shall have the benefit
18 of any defense that would be available to the debtor heir in a direct proceeding by the
19 personal representative for the recovery of the debt, except that the debtor heir may
20 not defend on the basis that the debt was discharged in bankruptcy or on the basis
21 that the relevant statute of limitations has expired. If the debtor fails to survive the
22 decedent, the court may not include the debt in computing any intestate shares of the
23 debtor's issue.

24 (2) TRANSFEREE UNDER REVOCABLE GOVERNING INSTRUMENT. (a) Subject to par.
25 (c), if a transferee under a revocable governing instrument survives the transferor

and is indebted to the transferor, the amount of the indebtedness shall be treated as an offset against the property to which the debtor transferee is entitled. The property not distributed to the debtor becomes part of the decedent's probate estate if it is not already. If multiple revocable governing instruments transfer property to the debtor, the debt shall be ^{equitably} allocated against the various instruments.

(b) Subject to par. (c), in contesting an offset under par. (a), the debtor shall have the benefit of any defense that would be available to the transferee in a direct proceeding for the recovery of the debt, except that the transferee may not defend on the basis that the debt was discharged in bankruptcy, unless that discharge occurred before the execution of the governing instrument, or on the basis that the relevant statute of limitations has expired. If the transferee fails to survive the decedent, the debt may not be included in computing the entitlement of alternate beneficiaries.

(c) Paragraph (a) or (b) does not apply if the person who executed the governing instrument had a contrary intent. Extrinsic evidence may be used to construe that intent.

SECTION 108. 854.13 (title) of the statutes is amended to read:

854.13 (title) Disclaimer of transfers at death.

SECTION 109. 854.13 (2) (a) of the statutes is renumbered 854.13 (2) (a) 2.

SECTION 110. 854.13 (2) (a) 1. of the statutes is created to read:

854.13 (2) (a) 1. In this paragraph, "person" includes a person who is unborn or unascertained.

SECTION 111. 854.13 (2) (gm) of the statutes is created to read:

854.13 (2) (gm) *Disclaimer by trustee.* The trustee of a trust named as a recipient of property under a governing instrument may disclaim that property on behalf of the trust if the governing instrument authorizes disclaimer by the trustee.

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NOTE: I left "may" in the last sentence of par. (b) because our style is to use "may not" to prohibit. "shall" is directive.

1 If the governing instrument does not authorize disclaimer by the trustee, the
2 trustee's power to disclaim is subject to the approval of the court.

3 **SECTION 112.** 854.13 (2) (i) of the statutes is created to read:

4 854.13 (2) (i) *Disclaimer of inter vivos transfers.* A person who is a recipient
5 of property under an inter vivos governing instrument, as defined in s. 700.27 (1) (c),
6 may disclaim the property as provided in s. 700.27.

7 **SECTION 113.** 854.13 (7) (a) of the statutes is amended to read:

8 854.13 (7) (a) Unless the transferor of the property or donee of the power has
9 otherwise provided governing instrument provides otherwise, either expressly or as
10 construed from extrinsic evidence, the disclaimed property devolves as if the
11 disclaimant had died before the decedent or before the effective date of the transfer
12 under the governing instrument. If the disclaimant is an appointee under a power
13 exercised by a governing instrument, the disclaimed property devolves as if the
14 disclaimant had died before the effective date of the exercise of the power. If the
15 disclaimant is a taker in default under a power created by a governing instrument,
16 the disclaimed property devolves as if the disclaimant had predeceased the donee of
17 the power. This paragraph is subject to subs. (8), (9) and (10).

18 **SECTION 114.** 854.13 (8) of the statutes is amended to read:

19 854.13 (8) DEVOLUTION OF DISCLAIMED INTEREST IN JOINT TENANCY. ~~A~~ Unless the
20 decedent provided otherwise in a governing instrument, either expressly or as
21 construed from extrinsic evidence, a disclaimed interest in a joint tenancy passes to
22 the decedent's probate estate.

23 **SECTION 115.** 854.13 (9) of the statutes is amended to read:

24 854.13 (9) DEVOLUTION OF DISCLAIMED INTEREST IN SURVIVORSHIP MARITAL
25 PROPERTY. ~~A~~ Unless the decedent provided otherwise in a governing instrument,

1 either expressly or as construed from extrinsic evidence, a disclaimed interest in
2 survivorship marital property passes to the decedent's probate estate.

3 **SECTION 116.** 854.13 (10) of the statutes is renumbered 854.13 (10) (a) and
4 amended to read:

5 854.13 (10) (a) Future interest held by a person other than the disclaimant.
6 Unless the governing instrument creating the future interest manifests a contrary
7 intent provides otherwise, either expressly or as construed from extrinsic evidence,
8 upon the disclaimer of a preceding interest, a future interest limited to take effect
9 in possession or enjoyment after the termination of the interest which is disclaimed
10 held by a person other than the disclaimant takes effect as if the disclaimant had died
11 immediately before the effective date of the governing instrument time of
12 distribution or, if the disclaimant is an appointee under a power exercised by a
13 governing instrument power of appointment, as if the disclaimant had died before
14 the effective date of the exercise of the power.

15 **SECTION 117.** 854.13 (10) (b) of the statutes is created to read:

16 854.13 (10) (b) Future interest held by the disclaimant. A future interest held
17 by the disclaimant takes effect as described in par. (a) unless the court determines
18 that acceleration would contradict the donor's probable intent.

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INS
37-19
**** NOTE: Is the court the only person that can determine that acceleration would
contradict the donor's probable intent. I ask only because you were careful to use passive
voice elsewhere because the court was not the only person able to make determinations.

19 **SECTION 118.** 854.13 (12) (b) of the statutes is amended to read:

20 854.13 (12) (b) Any disclaimer that meets the requirements of section 2518 of
21 the Internal Revenue Code, or the requirements of any other federal law relating to
22 disclaimers, constitutes an effective disclaimer under this section or s. 700.27.

23 **SECTION 119.** 854.14 (1) of the statutes is repealed.

1 **SECTION 120.** 854.14 (3m) of the statutes is created to read:

2 854.14 (3m) EFFECT IF DEATH CAUSED BY SPOUSE. (a) *Definitions.* In this
3 subsection:

4 1. “Owner” means a person appearing on the records of the policy issuer as the
5 person having the ownership interest, or means the insured if no person other than
6 the insured appears on those records as a person having that interest. In the case
7 of group insurance, the “owner” means the holder of each individual certificate of
8 coverage under the group plan and does not include the person who contracted with
9 the policy issuer on behalf of the group, regardless of whether that person is listed
10 as the owner on the contract.

11 2. “Ownership interest” means the rights of an owner under a policy.

12 3. “Policy” means an insurance policy insuring the life of a spouse and providing
13 for payment of death benefits at the spouse’s death.

14 4. “Proceeds” means the death benefit from a policy and all other economic
15 benefits from it, whether they accrue or become payable as a result of the death of
16 an insured person or upon the occurrence or nonoccurrence of another event.

17 (b) *Life insurance.* 1. Except as provided in sub. (6), if a noninsured spouse
18 unlawfully and intentionally kills an insured spouse, the surviving spouse’s
19 ownership interest in a policy that designates the decedent spouse as the owner and
20 insured, or in the proceeds of such a policy, is limited to a dollar amount equal to
21 one-half of the marital property interest in the interpolated terminal reserve and in
22 the unused portion of the term premium of the policy on the date of death of the
23 decedent spouse. All other rights of the surviving spouse in the ownership interest
24 or proceeds of the policy, other than the marital property interest described in this
25 subsection, terminate at the decedent spouse’s death.

1 2. Notwithstanding s. 766.61 (7) and except as provided in sub. (6), if an insured
2 spouse unlawfully and intentionally kills a noninsured spouse, the ownership
3 interest at death of the decedent spouse in any policy with a marital property
4 component that designates the surviving spouse as the owner and insured is a
5 fractional interest equal to one-half of the portion of the policy that was marital
6 property immediately before the death of the decedent spouse.

7 (c) *Deferred employment benefits.* Notwithstanding s. 766.62 (5) and except as
8 provided in sub. (6), if the employee spouse unlawfully and intentionally kills the
9 nonemployee spouse, the ownership interest at death of the decedent spouse in any
10 deferred employment benefit, or in assets in an individual retirement account that
11 are traceable to the rollover of a deferred employment benefit plan, that has a marital
12 property component and that is attributable to the employment of the surviving
13 spouse is equal to one-half of the portion of the benefit or assets that was marital
14 property immediately before the death of the decedent spouse.

15 (d) *Deferred marital property.* Except as provided in sub. (6), if the surviving
16 spouse unlawfully and intentionally kills the decedent spouse, the estate of the
17 decedent shall have the right to elect no more than 50% of the augmented deferred
18 marital property estate, as determined under s. 861.02 (2), as though the decedent
19 spouse were the survivor and the surviving spouse were the decedent. The court
20 shall construe the provisions of ss. 861.03 to 861.11 as necessary to achieve the intent
21 of this paragraph.

22 **SECTION 121.** 854.14 (5) (a) of the statutes is amended to read:

23 854.14 (5) (a) A final judgment establishing criminal accountability for the
24 unlawful and intentional killing of the decedent conclusively establishes the

1 convicted individual as the decedent's killer for purposes of this section and s. 861.02
2 (8).

3 **SECTION 122.** 854.14 (5) (b) of the statutes is amended to read:

4 854.14 (5) (b) A final adjudication of delinquency on the basis of an unlawful
5 and intentional killing of the decedent conclusively establishes the adjudicated
6 individual as the decedent's killer for purposes of this section and s. 861.02 (8).

7 **SECTION 123.** 854.14 (5) (c) of the statutes is amended to read:

8 854.14 (5) (c) In the absence of a judgment establishing criminal accountability
9 under par. (a) or an adjudication of delinquency under par. (b), the court, upon the
10 petition of an interested person, shall determine whether, ~~under~~ based on the
11 preponderance of the evidence standard, the killing of the decedent was unlawful
12 and intentional for purposes of this section and s. 861.02 (8).

13 **SECTION 124.** 854.15 (1) (e) of the statutes is renumbered 854.01 (3) and
14 amended to read:

15 854.01 (3) "Revocable", with respect to a disposition, provision, or
16 nomination, means one under which the decedent, at the time of the divorce,
17 annulment or similar event referred to, was alone empowered, by law or under the
18 governing instrument, to ~~cancel the designation in favor of the former spouse or~~
19 ~~former spouse's relative,~~ change or revoke, regardless of whether or not the decedent
20 was then empowered to designate himself or herself in place of a former spouse
21 ~~or the former spouse's relative~~ designee, and regardless of whether or not the
22 decedent then had the capacity to exercise the power.

23 **SECTION 125.** 854.17 of the statutes is amended to read:

24 **854.17 Classification; how determined** Marital property classification;
25 ownership and division of marital property at death. In chs. 851 to 882,

1 ~~classification~~ Classification of the property of a decedent spouse and surviving
2 spouse ~~is, and ownership and division of that property at the death of a spouse, are~~
3 determined under ch. 766 and s. 861.01.

4 **SECTION 126.** 854.18 (1) (a) (intro.) of the statutes is amended to read:

5 854.18 (1) (a) (intro.) Except as provided in sub. (3) or in connection with the
6 ~~share of the surviving spouse who elects to take an elective share in deferred marital~~
7 ~~property~~ deferred marital property elective share amount of a surviving spouse who
8 elects under s. 861.02, ~~a the share of a surviving~~ spouse who takes under s. 853.11
9 ~~(2) 853.12, or a the share of a surviving~~ child who takes under s. 853.25, shares of
10 distributees abate, without any preference or priority as between real and personal
11 property, in the following order:

12 **SECTION 127.** 854.18 (3) of the statutes is amended to read:

13 854.18 (3) If the governing instrument expresses an order of abatement, or if
14 the decedent's transferor's estate plan or the ~~express or implied~~ purpose of the
15 transfer, as expressed, implied, or determined through extrinsic evidence, would be
16 defeated by the order of abatement under sub. (1), the shares of the distributees
17 abate as necessary to give effect to the intention of the transferor.

18 **SECTION 128.** 854.20 (1) of the statutes is renumbered 854.20 (1) (a) and
19 amended to read:

20 854.20 (1) (a) Subject to par. (b) and sub. ~~(4)~~ (5), a legally adopted person is
21 treated as a birth child of the person's adoptive parents and the adoptive parents are
22 treated as the birth parents of the adoptive child for purposes of ~~intestate succession~~
23 transfers at death by, through, and from the adopted person and for purposes of any
24 statute or other rule conferring rights upon children, issue, or relatives in connection
25 with the law of intestate succession or governing instruments.

1 **SECTION 129.** 854.20 (2) (intro.) of the statutes is renumbered 854.20 (2) (am)
2 (intro.) and amended to read:

3 854.20 (2) (am) (intro.) Subject to sub. (4) (5), a legally adopted person ceases
4 to be treated as a child of the person's birth parents and the birth parents cease to
5 be treated as the parents of the child for the same purposes as under specified in sub.
6 (1) (a), except:

7 **SECTION 130.** 854.20 (2) (a) of the statutes is renumbered 854.20 (2) (am) 1. and
8 amended to read:

9 854.20 (2) (am) 1. ~~If a birth parent marries or remarries and the parent-child~~
10 relationship between the child is adopted by the stepparent, and one birth parent is
11 replaced by adoption, but the relationship to the other birth parent is not replaced,
12 then for all purposes the child is treated as the child of the birth parent whose spouse
13 ~~adopted the child~~ relationship was not replaced.

14 **SECTION 131.** 854.20 (2) (am) 2. b. and c. of the statutes are created to read:

15 854.20 (2) (am) 2. b. Subd. 2. a. applies only if the adopted person was a minor
16 at the time of adoption or if the adoptive parent raised the adopted person in a
17 parent-like relationship beginning on or before the child's 15th birthday and lasting
18 for a substantial period or until adulthood.

19 c. Subdivision 2. a. does not apply if the parental rights of the deceased birth
20 parent had been terminated.

21 **SECTION 132.** 854.20 (2) (b) of the statutes is renumbered 854.20 (2) (am) 2. a.
22 and amended to read:

23 854.20 (2) (am) 2. a. ~~If~~ Subject to subd. 2. b. and c., if a birth parent of a marital
24 child dies and the other birth parent subsequently remarries and the child is adopted
25 by the stepparent, the child is treated as the child of the deceased birth parent for

1 purposes of inheritance transfers at death through that parent and for purposes of
2 any statute or other rule conferring rights upon children, or issue or relatives of that
3 parent under the law of intestate succession or governing instruments.

4 SECTION 133. 854.20 (2) (bm) of the statutes is created to read:

5 854.20 (2) (bm) Subject to sub. (5), in par. (am) 2., the child is not treated as the
6 child of the deceased birth parent for purposes of transfers at death from or through
7 the child or for purposes of any statute or other rule conferring rights upon relatives
8 of that parent under the law of intestate succession or governing instruments.

9 SECTION 134. 854.20 (3) of the statutes is renumbered 854.20 (2) (cm) and
10 amended to read:

11 854.20 (2) (cm) ~~Sequential adoption.~~ Subject to sub. (4) (5), if an adoptive
12 parent dies or his or her parental rights are terminated in a legal proceeding and the
13 adopted child is subsequently adopted by another person, the former adoptive parent
14 is considered to be a birth parent for purposes of this section subsection.

15 SECTION 135. 854.20 (4) of the statutes is renumbered 854.20 (1) (b), and 854.20
16 (1) (b) (intro.) and 3., as renumbered, are amended to read:

17 854.20 (1) (b) ~~Applicability.~~ (intro.) Subsections (1), (2) and (3) apply Subject
18 to sub. (5), par. (a) applies only if at least one of the following applies:

19 3. The adoptive parent raised the adopted person was raised as a member of
20 the household by the adoptive parent from in a parent-like relationship beginning
21 on or before the child's 15th birthday or before and lasting for a substantial period
22 or until adulthood.

23 SECTION 136. 854.20 (5) of the statutes is amended to read:

24 854.20 (5) CONTRARY INTENT. This section does not apply if the to a transfer is
25 made under a governing instrument and there is a finding of contrary intent of if the

to that
part
of
this
section ✓

1 person who executed the instrument had a contrary intent. Extrinsic evidence may
2 be used to construe that intent.

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INS 24-3
***NOTE: The term "this section" includes all of the subparts of the section, so the suggested language "or any of its subparts" is not necessary. You asked for authority on this issue. I think you believe that "this section" could be misinterpreted as "this subsection." But our drafting manual requires that we cite the unit specifically (sec. 9.02). Also, "this section" appears in the statutes 13,938 times ("its subparts" accompanies none of those appearances). Finally, I am not sure what else "this section" could mean if not the whole section. If I am missing the misinterpretation that you perceive, please let me know.

3 **SECTION 137.** 854.21 (1) (a) (intro.) of the statutes is renumbered 854.21 (1) (a)
4 and amended to read:

5 854.21 (1) (a) Except as provided in ~~par. (b) or~~ sub. (7), a gift of property by a
6 governing instrument to a class of persons described as "issue," "lawful issue,"
7 "children," "grandchildren," "descendants," "heirs," "heirs of the body," "next of kin,"
8 "distributees," or the like includes a person adopted by a person whose birth child
9 would be a member of the class, and issue of the adopted person, if the conditions for
10 membership in the class are otherwise satisfied and any of the following applies: at
11 least one of the criteria under s. 854.20 (1) (b) 1., 2., and 3. is satisfied.

12 **SECTION 138.** 854.21 (1) (a) 1., 2. and 3. of the statutes are repealed.

13 **SECTION 139.** 854.21 (1) (b) of the statutes is amended to read:

14 854.21 (1) (b) Except as provided in sub. (7), a gift ~~under par. (a) of property by~~
15 a governing instrument to a class of persons described as "issue," "lawful issue,"
16 "children," "grandchildren," "descendants," "heirs," "heirs of the body," "next of kin,"
17 "distributees," or the like excludes a birth child and his or her issue otherwise within
18 the class if the birth child has been adopted and would cease to be treated as a child
19 of the birth parent under s. 854.20 (2).

20 **SECTION 140.** 856.05 (5) of the statutes is amended to read:

1 856.05 (5) APPLICABILITY OF SECTION. This section applies to wills, ~~codicils,~~
2 ~~documents incorporated by reference under s. 853.32 (1) or (2)~~ and information
3 needed for proof of a lost missing will under s. 856.17.

4 **SECTION 141.** 856.15 (1) of the statutes is amended to read:

5 856.15 (1) GENERALLY. The court may grant probate of an uncontested will on
6 the execution in open court by one of the subscribing witnesses of a sworn statement
7 that the will was executed as required by the statutes and that the testator was of
8 sound mind, of full age, and not acting under any restraint at the time of the
9 execution thereof. If an uncontested will contains an attestation clause showing
10 compliance with the requirements for execution under s. 853.03 or 853.05 or includes
11 an affidavit in substantially the form under s. 853.04 (1) or (2), the court may grant
12 probate without any testimony or other evidence.

13 **SECTION 142.** 856.16 of the statutes is repealed and recreated to read:

14 **856.16 Self-proved will.** (1) Unless there is proof of fraud or forgery in
15 connection with the affidavit, if a will includes an affidavit in substantially the form
16 under s. 853.04 (1) or (2), all of the following apply:

17 (a) The will is conclusively presumed to have been executed in compliance with
18 s. 853.03.

19 (b) Other requirements related to the valid execution of the will are rebuttably
20 presumed.

21 (c) A signature affixed to the affidavit is considered a signature affixed to the
22 will, if necessary to prove the due execution of the will.

23 (2) Admission of a will under s. 856.13 or 856.15 is not dependent on the
24 existence of a valid affidavit under s. 853.04.

25 **SECTION 143.** 856.17 of the statutes is amended to read:

1 **856.17 Lost Missing will, how proved.** If any will is lost, destroyed by
2 accident ~~or~~, destroyed without the testator's consent, unavailable but revived under
3 s. 853.11 (6), or otherwise missing, the court has power to take proof of the execution
4 and validity of the will and to establish the same. The petition for the probate of the
5 will shall set forth the provisions ~~thereof~~ of the will.

6 **SECTION 144.** 857.03 (2) of the statutes is renumbered 766.31 (3) (b) 3., and
7 766.31 (3) (b) 3. (intro.) and a., as renumbered, are amended to read:

8 766.31 (3) (b) 3. (intro.) The surviving spouse and a distributee who is a
9 successor in interest to all or part of the decedent's one-half interest in marital
10 property may petition the court to approve an exchange of interests in the marital
11 property authorized under subd. 1. or 2., but court approval of the exchange is not
12 required for the agreement under subd. 1. or 2. to be effective. If the court approves
13 the exchange, the ~~personal representative~~ surviving spouse and the distributee shall
14 exchange their respective interests in 2 or more items of marital property and
15 distribute the items in a manner to conform with the exchange. The exchange shall:

16 a. Occur before the final distribution of the estate assets under the governing
17 instrument;

18 **SECTION 145.** 857.03 (2m) of the statutes is created to read:

19 857.03 (2m) The surviving spouse and the personal representative may
20 petition the court to approve an exchange of interests in marital property as provided
21 in s. 766.31 (3) (b) 3.

22 **SECTION 146.** 861.01 (3) of the statutes is renumbered 766.31 (7m) and
23 amended to read:

24 766.31 (7m) **PERSONAL INJURY DAMAGES; LOST EARNINGS.** To the extent that
25 marital property includes damages for loss of future income arising from a personal

1 injury claim of the a surviving spouse, the surviving spouse is entitled to receive as
2 individual property that portion of the award that represents an income substitute
3 after the death of the other spouse.

4 **SECTION 147.** 861.01 (3m) of the statutes is created to read:

5 861.01 (3m) PERSONAL INJURY DAMAGES; LOST EARNINGS. Section 766.31 (7m)
6 determines the rights of a surviving spouse to that part of a personal injury claim
7 that represents future lost earnings of the surviving spouse.

8 **SECTION 148.** 861.01 (4) of the statutes is created to read:

9 861.01 (4) ENFORCEMENT OF SURVIVING SPOUSE'S MARITAL PROPERTY RIGHTS IN
10 NONPROBATE ASSETS. Section 766.70 applies to enforcement of a surviving spouse's
11 marital property rights in nonprobate assets.

12 **SECTION 149.** 861.01 (5) of the statutes is created to read:

13 861.01 (5) DIVISION OF MARITAL PROPERTY ON AGGREGATE BASIS. Section 766.31
14 (3) (b) determines how marital property may be divided upon the death of a spouse.

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by that. ~~***NOTE: Your note read "do same as s. 766.31 (3) (b); I am not sure what you meant~~

15 **SECTION 150.** Subchapter II (title) of chapter 861 [precedes 861.018] of the
16 statutes is amended to read:

17 **CHAPTER 861**

18 **SUBCHAPTER II**

19 **ELECTIVE SHARE IN**

20 **DEFERRED MARITAL PROPERTY**

21 **ELECTIVE SHARE AMOUNT**

22 **SECTION 151.** 861.02 (title) of the statutes is amended to read:

23 **861.02 (title) Deferred marital property elective share amount.**

1 **SECTION 152.** 861.02 (4) of the statutes is amended to read:

2 861.02 (4) SATISFACTION. Satisfaction of the augmented deferred marital
3 property elective share amount is governed by ss. 861.06, 861.07, and 861.11.

4 **SECTION 153.** 861.02 (6) of the statutes is amended to read:

5 861.02 (6) WAIVER. Waiver of the deferred marital property elective share
6 amount is governed by s. 861.10.

7 **SECTION 154.** 861.02 (7) (b) of the statutes is amended to read:

8 861.02 (7) (b) If a decedent who is not domiciled in this state owns real property
9 in this state, the ~~right~~ rights of the surviving spouse ~~to take an elective share in that~~
10 property is are governed by s. 861.20.

11 **SECTION 155.** 861.02 (8) of the statutes is repealed and recreated to read:

12 861.02 (8) EFFECT IF DEATH CAUSED BY SPOUSE. Section 854.14 (2) (c) and (3m)
13 (d) applies to election of deferred marital property if the decedent's surviving spouse
14 unlawfully and intentionally killed the decedent.

15 **SECTION 156.** 861.04 (2) of the statutes is repealed.

16 **SECTION 157.** 861.04 (2m) of the statutes is created to read:

17 861.04 (2m) When the surviving spouse is treated as the decedent under sub.
18 (1), the decedent is not treated as the surviving spouse for the purposes of s. 861.05
19 (1) (e) or (2m).

20 **SECTION 158.** 861.05 (1) (c) of the statutes is amended to read:

21 861.05 (1) (c) Transfers of deferred marital property to persons other than the
22 surviving spouse who did not make the transfer, with the written joinder or written
23 consent of the surviving that spouse.

24 **SECTION 159.** 861.05 (1) (e) of the statutes is created to read:

1 861.05 (1) (e) The deferred marital property component of any deferred
2 employment benefit plan, or of assets in an individual retirement account that are
3 traceable to the rollover of a deferred employment benefit plan, held by the surviving
4 spouse that would have terminated under s. 766.62 (5) had it been marital property.

5 **SECTION 160.** 861.05 (2) (title) of the statutes is amended to read:

6 861.05 (2) (title) VALUATION OF DECEDENT'S PROPERTY AND TRANSFERS.

7 **SECTION 161.** 861.05 (2m) of the statutes is created to read:

8 861.05 (2m) **VALUATION OF SURVIVING SPOUSE'S PROPERTY AND TRANSFERS.** The
9 surviving spouse's property included in the augmented deferred marital property
10 estate under s. 861.04 (1) is valued in the same manner as the decedent spouse's
11 property included in the augmented deferred marital property estate is valued under
12 sub. (2), subject to the following:

13 (a) The surviving spouse shall be treated as having died after the decedent on
14 the date of the decedent's death notwithstanding the 120-hour survival requirement
15 under s. 854.03 (1).

16 (b) Life insurance on the surviving spouse's life shall have the value of the
17 deferred marital property component of the interpolated terminal reserve and the
18 unused portion of the term premium of the policy as of the date of the decedent's
19 death.

20 **SECTION 162.** 861.06 (title) of the statutes is amended to read:

21 **861.06 (title) Satisfaction of deferred marital property elective share**
22 **amount.**

23 **SECTION 163.** 861.06 (2) (title) of the statutes is amended to read:

24 861.06 (2) (title) **INITIAL SATISFACTION OF DEFERRED MARITAL PROPERTY ELECTIVE**
25 **SHARE AMOUNT.**

1 **SECTION 164.** 861.06 (2) (b) (intro.) of the statutes is amended to read:

2 861.06 (2) (b) (intro.) All marital, individual, deferred marital, or deferred
3 individual property, transferred to the surviving spouse, including any beneficial
4 interest in property transferred in trust:

5 **SECTION 165.** 861.06 (2) (b) 4. a. of the statutes is amended to read:

6 861.06 (2) (b) 4. a. The first \$5,000 of the value of the gifts from the decedent
7 to the surviving spouse each year. Each gift shall be valued as of the date of the gift.

8 **SECTION 166.** 861.06 (6) of the statutes is created to read:

9 861.06 (6) VALUATION. The value of property used to satisfy the deferred marital
10 property elective share includes the value of any property transferred outright to the
11 surviving spouse, the commuted value of any present or future interest in property
12 transferred to the surviving spouse, and the commuted value of property payable to
13 the surviving spouse under any trust, life insurance settlement option, annuity
14 contract, public or private pension, disability compensation, death benefit or
15 retirement plan, or any similar arrangement.

16 **SECTION 167.** 861.07 (2) (intro.) of the statutes is amended to read:

17 861.07 (2) PERSONS LIABLE. (intro.) The following persons are liable to make
18 a prorated contribution toward satisfaction of the surviving spouse's deferred
19 marital property elective share amount:

20 **SECTION 168.** 861.10 (1) of the statutes is amended to read:

21 861.10 (1) RIGHT TO ELECT MAY BE WAIVED. The right to elect a deferred marital
22 property elective share amount may be waived by the surviving spouse in whole or
23 in part. The waiver may take place before or after marriage. The waiver ~~shall~~ must
24 be contained in a marital property agreement that is enforceable under s. 766.58 or

1 in a signed document filed with a court described in s. 861.08 (1) (a) after the
2 decedent's death.

3 **SECTION 169.** 861.10 (2) of the statutes is amended to read:

4 861.10 (2) WAIVER OF "ALL RIGHTS",. Unless the waiver provides otherwise, a
5 waiver of "all rights",. or equivalent language, in the property or estate of a present
6 or prospective spouse, or in a complete property settlement entered into because of
7 separation or divorce, is a waiver of all rights in the deferred marital property
8 elective share amount.

9 **SECTION 170.** 861.11 (2) (a) (intro.) of the statutes is amended to read:

10 861.11 (2) (a) (intro.) Upon a beneficiary's request for payment, a payer or other
11 3rd party who has received satisfactory proof of the decedent's death and who has not
12 received written notice that the surviving spouse or his or her representative intends
13 to file a petition for the deferred marital property elective share amount or that a
14 petition for the election has been filed is not liable for any of the following:

15 **SECTION 171.** 861.11 (2) (b) of the statutes is amended to read:

16 861.11 (2) (b) A payer or other 3rd party is liable for payments made or other
17 actions taken after receipt of written notice of the intent to file a petition for the
18 elective share amount or written notice that a petition for the elective share amount
19 has been filed.

20 **SECTION 172.** 861.11 (5) (b) of the statutes is amended to read:

21 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
22 a financial institution under ss. 701.19 (11) and 710.05 and chs. 112 and 705 a
23 financial institution is not liable for having transferred an account included in the
24 augmented deferred marital property estate under s. 861.03 to a beneficiary
25 designated in a governing instrument, or for having taken any other action in

1 reliance on the beneficiary's apparent entitlement under the terms of a governing
2 instrument, regardless of whether the financial institution received written notice
3 of an intent to file, or the filing of, a petition for the deferred marital property elective
4 share amount.

5 **SECTION 173.** 861.17 (3) of the statutes is amended to read:

6 861.17 (3) If the spouse is successful in an action to reach fraudulent property
7 arrangements, recovery is limited to the share amount the spouse would receive
8 under ch. 852 and this chapter. Other rules of this chapter apply so far as possible.
9 Recovery A spouse who recovers under this subsection forfeits any power of
10 appointment ~~which~~ that the surviving spouse possesses over the remaining portion
11 of the fraudulently arranged property, except a special power.

12 **SECTION 174.** 861.21 (1) (a) of the statutes is amended to read:

13 861.21 (1) (a) "Governing instrument" has the meaning given in s. 854.01 (2).

14 **SECTION 175.** 861.21 (2) of the statutes is amended to read:

15 861.21 (2) ~~IF MARITAL DECEDENT'S~~ PROPERTY INTEREST IN HOME. Subject to subs.
16 (4) and (5), if a married decedent has a ~~marital~~ property interest in a home, the
17 decedent's entire interest in the home shall be assigned to the surviving spouse if the
18 surviving spouse petitions the court requesting such a distribution and if a governing
19 instrument does not provide a specific transfer of the decedent's interest in the home
20 to someone other than the surviving spouse. The surviving spouse shall file the
21 petition within 6 months after the decedent's death, unless the court extends the
22 time for filing.

23 **SECTION 176.** 861.21 (3) of the statutes is repealed.

24 **SECTION 177.** 861.21 (4) of the statutes is amended to read:

1 861.21 (4) PAYMENT BY SURVIVING SPOUSE. The court shall assign the interest in
2 the home under sub. (2) to the surviving spouse upon payment of the value of the
3 decedent's interest in the home that does not pass to the surviving spouse under
4 intestacy or under ~~the~~ a governing instrument. Payment shall be made to the
5 fiduciary holding title to the interest. The surviving spouse may use assets due him
6 or her from the fiduciary to satisfy all or part of the payment in kind. Unless the court
7 extends the time, the surviving spouse shall have one year from the decedent's death
8 to pay the value of the assigned interest.

9 **SECTION 178.** 861.21 (5) of the statutes is amended to read:

10 861.21 (5) SEVERANCE OF HOME FROM SURROUNDING LAND. On petition of the
11 surviving spouse or of any interested person that part of the land is not necessary for
12 dwelling purposes and that it would be inappropriate to assign all of the surrounding
13 land as the home under sub. (2), the court may set off for the home as much of the
14 land as is necessary for a dwelling. In determining how much land should be set off,
15 the court shall take into account the use and marketability of the parcels set off as
16 the home and the remaining land.

17 **SECTION 179.** 861.31 (1c) of the statutes is repealed.

18 **SECTION 180.** 861.31 (1m) of the statutes is amended to read:

19 861.31 (1m) The court may, without notice or on such notice as the court
20 directs, order payment by the personal representative or special administrator of an
21 allowance as ~~it~~ the court determines necessary or appropriate for the support of the
22 surviving spouse and any dependent minor children of the decedent during the
23 administration of the estate. ~~In making or denying the order the~~ The court shall
24 consider the size of the probate estate, other resources available for support, the
25 existing standard of living, and any other factors it considers relevant.

1 **SECTION 181.** 861.31 (2) of the statutes is amended to read:

2 861.31 (2) The court may order that an allowance may be made to the spouse
3 for support of the spouse and any dependent minor children of the decedent, or that
4 separate allowances may be made to the spouse and to the dependent minor children
5 of the decedent or their guardian, if any, if the court finds separate allowances
6 advisable. If there is no surviving spouse, the court may order that an allowance may
7 be made to the dependent minor children of the decedent or to their guardian, if any.

8 **SECTION 182.** 861.31 (4) (intro.) of the statutes is amended to read:

9 861.31 (4) (intro.) The court may direct order that the allowance be charged
10 against income or principal, either as an advance or otherwise, but in no event may
11 the court may not order that an allowance for support of dependent minor children
12 of the decedent be charged against the income or principal interest of the surviving
13 spouse. The court may direct order that the allowance for support of the surviving
14 spouse, not including any allowance for support of dependent minor children of the
15 decedent, be applied in satisfaction of any of the following:

16 **SECTION 183.** 861.31 (4) (a) of the statutes is amended to read:

17 861.31 (4) (a) Any entitlement of the surviving spouse under s. ~~853.11 (2)~~
18 853.12.

19 **SECTION 184.** 861.33 (title) of the statutes is amended to read:

20 **861.33 (title) Selection of personalty by surviving spouse or children.**

21 **SECTION 185.** 861.33 (1) (a) (intro.) of the statutes is amended to read:

22 861.33 (1) (a) (intro.) Subject to this section, in addition to all allowances and
23 distributions, the surviving spouse, or if there is no surviving spouse the decedent's
24 children, may file with the court a written selection of the following personal

1 property, which shall ~~thereupon~~ then be transferred to the spouse ~~or children~~ by the
2 personal representative:

3 **SECTION 186.** 861.33 (1) (b) of the statutes is amended to read:

4 861.33 (1) (b) The selection in par. (a) may not include items specifically
5 bequeathed except that the surviving spouse ~~or children~~ may in every case select the
6 normal household furniture, furnishings, and appliances necessary to maintain the
7 home. For this purpose antiques, family heirlooms, and collections ~~which~~ that are
8 specifically bequeathed are not classifiable as normal household furniture or
9 furnishings.

10 **SECTION 187.** 861.33 (1) (c) of the statutes is repealed.

11 **SECTION 188.** 861.33 (2) of the statutes is amended to read:

12 861.33 (2) If it appears that claims may not be paid in full, the court may, upon
13 petition of any creditor, limit the transfer of personalty to the spouse ~~or children~~
14 under this section to items not exceeding \$5,000 in aggregate inventory value until
15 ~~such time as~~ the claims are paid in full or the court otherwise orders, or the court
16 may require the spouse ~~or children~~ to retransfer property in excess of \$5,000 or, at
17 the option of the spouse ~~or children~~, pay the excess in value over this amount.

18 **SECTION 189.** 861.33 (3) of the statutes is amended to read:

19 861.33 (3) The surviving spouse ~~or children~~ may select items not specifically
20 bequeathed of the type specified under sub. (1) (a) 4. exceeding in value the \$3,000
21 limit or obtain the transfer of items exceeding the limit set by the court under sub.
22 (2), by paying to the personal representative the excess of inventory value over the
23 respective limit.

24 **SECTION 190.** 861.33 (4) of the statutes is amended to read:

1 861.33 (4) ~~Subject to sub. (1) (c), the~~ The personal representative has power,
2 without court order, to execute appropriate documents to effect transfer of title to any
3 personal property ~~selected by the spouse or children~~ selects under this section. A
4 person may not question the validity of the documents of transfer or refuse to
5 accomplish the transfer on the grounds that the personal representative is also the
6 surviving spouse ~~or the only child~~ of the decedent.

7 **SECTION 191.** 861.35 (title) of the statutes is amended to read:

8 **861.35 (title) Special allowance for support of spouse and support and**
9 **education of dependent minor children.**

10 **SECTION 192.** 861.35 (1c) of the statutes is repealed.

11 **SECTION 193.** 861.35 (1m) (intro.) of the statutes is amended to read:

12 861.35 (1m) (intro.) If the decedent is survived by a spouse or by minor
13 children, the court may order an allowance for the support and education of each
14 dependent minor child until he or she reaches a specified age, not to exceed 18, and
15 for the support of the spouse. This allowance may be made whether the estate is
16 testate or intestate. If the decedent is not survived by a spouse, the court also may
17 allot directly to ~~any of the dependent~~ the minor children household furniture,
18 furnishings, and appliances. ~~No~~ The court may not order an allowance ~~may be made~~
19 under this section if any of the following apply applies:

20 **SECTION 194.** 861.35 (1m) (a) of the statutes is amended to read:

21 861.35 (1m) (a) The decedent has amply provided for each minor child and for
22 the spouse by the ~~terms of his or her will and the estate is sufficient to carry out the~~
23 ~~terms after payment of all debts and expenses~~ transfer of probate or nonprobate
24 assets, or support and education have been provided for by any other means.

25 **SECTION 195.** 861.35 (1m) (b) of the statutes is amended to read:

1 861.35 (1m) (b) In the case of ~~dependent~~ minor children, if the surviving spouse
2 is legally responsible for support and education and has ample means to provide
3 them in addition to his or her own support.

4 **SECTION 196.** 861.35 (1m) (c) of the statutes is amended to read:

5 861.35 (1m) (c) In the case of the surviving spouse, if he or she has ample means
6 to provide for his or her support.

7 **SECTION 197.** 861.35 (2) of the statutes is amended to read:

8 861.35 (2) The court may set aside property to provide an allowance and may
9 appoint a trustee to administer the property, subject to the continuing jurisdiction
10 of the court. If a child dies or reaches the age of 18, or if at any time the property held
11 by the trustee is no longer required for the support of the spouse or the support and
12 education of ~~any dependent~~ the minor child, any remaining property is to be
13 distributed by the trustee as ~~directed by the court~~ orders in accordance with the
14 terms of the decedent's will or to the heirs of the decedent in intestacy or to satisfy
15 unpaid claims of the decedent's estate.

16 **SECTION 198.** 861.35 (3) (a) of the statutes is amended to read:

17 861.35 (3) (a) The effect on claims under s. 859.25. The court shall balance the
18 needs of the spouse or ~~dependent~~ minor children against the nature of the creditors'
19 claims in setting the amount allowed under this section.

20 **SECTION 199.** 861.35 (4) (intro.) of the statutes is amended to read:

21 861.35 (4) (intro.) The court may ~~direct~~ order that the allowance to the
22 surviving spouse, not including any allowance for the support and education of
23 dependent minor children, be applied in satisfaction of any of the following:

24 **SECTION 200.** 861.35 (4) (a) of the statutes is amended to read:

1 861.35 (4) (a) Any entitlement of the surviving spouse under s. ~~853.11 (2)~~
2 853.12.

3 **SECTION 201.** 863.08 of the statutes is amended to read:

4 **863.08 Exchange by distributee and surviving spouse.** In its final
5 judgment or other order, the court shall assign items to the surviving spouse and
6 distributee to conform with the exchange under s. ~~857.03 (2)~~ 766.31 (3) (b) to the
7 extent that the court approved the exchange.

8 **SECTION 202.** 863.15 of the statutes is amended to read:

9 **863.15 ~~Right of retention~~ Debts to estate.** ~~When If a distributee of an estate~~
10 ~~is indebted to the estate, the amount of the indebtedness if due, or the present worth~~
11 ~~of the indebtedness, if not due, shall be treated as an offset by the personal~~
12 ~~representative against property of the estate to which the distributee is entitled. In~~
13 ~~contesting the offset the distributee shall have the benefit of any defense which~~
14 ~~would be available to the distributee in a direct proceeding by the personal~~
15 ~~representative for the recovery~~ treatment of the debt is governed by s. 854.12.

16 **SECTION 203.** 863.16 of the statutes is repealed and recreated to read:

17 **863.16 Valuation used in distribution of fractional shares.** Valuation of
18 property distributed in satisfaction of a fractional share is determined by s. 854.115.

19 **SECTION 204.** 863.19 of the statutes is repealed and recreated to read:

20 **863.19 Valuation used in distribution of estate assets.** Valuation of
21 property distributed in satisfaction of a pecuniary bequest, or a dollar amount fixed
22 by formula or otherwise, is determined by s. 854.115.

23 **SECTION 205.** 865.07 (1) (d) of the statutes is amended to read:

24 865.07 (1) (d) The decedent died intestate or testate, and, if testate, whether
25 the original will is in the possession of the court or accompanies the application and,

1 contains an attestation clause showing compliance with the requirements of
2 execution under s. 853.03 or 853.05 or includes an affidavit in substantially the form
3 under s. 853.04 (1) or (2), and does not expressly prohibit informal administration;

4 **SECTION 206.** 867.03 (1g) (intro.) of the statutes is amended to read:

5 867.03 (1g) GENERALLY. (intro.) When a decedent leaves ~~solely owned~~ property
6 subject to administration in this state which does not exceed \$20,000 \$50,000 in
7 value, any heir of the decedent or person who was guardian of the decedent at the
8 time of the decedent's death may collect any money due the decedent, receive the
9 property of the decedent, and have any evidence of interest, obligation to, or right of
10 the decedent transferred to the affiant if the heir or guardian provides to the person
11 owing the money, having custody of the property, or acting as registrar or transfer
12 agent of the evidences of interest, obligation to, or right, or, if the property is an
13 interest in or lien on real property, provides to the register of deeds preliminary to
14 the recording required under sub. (2m), proof of prior mailed notice under sub. (1m)
15 if applicable and an affidavit in duplicate showing all of the following:

16 **SECTION 207.** 867.03 (1g) (b) of the statutes is amended to read:

17 867.03 (1g) (b) The total value of the decedent's property subject to
18 administration in this state at the date of decedent's death.

19 **SECTION 208.** 867.035 (1) (a) 4. of the statutes is amended to read:

20 867.035 (1) (a) 4. The value of the ~~solely owned~~ property subject to
21 administration in this state left by the decedent, after payment of burial costs, does
22 not exceed the amount under s. 867.03 (1g) (intro.).

23 **SECTION 209.** 880.61 (11m) of the statutes is created to read:

24 880.61 (11m) "Qualified minor's trust" means any trust, including a trust
25 created by the custodian, for which all of the following apply:

1 (a) The minor is the sole beneficiary.

2 (b) The trust satisfies the requirements of section 2503 (c) of the Internal
3 Revenue Code and the regulations implementing that section.

4 **SECTION 210.** 880.675 (1m) of the statutes is created to read:

5 880.675 (1m) At any time a custodian may transfer part or all of the custodial
6 property to a qualified minor's trust without a court order. Such a transfer
7 terminates the custodianship to the extent of the transfer.

8 **SECTION 211.** 1997 Wisconsin Act 188, section 233 (1) is amended to read:

9 [1997 Wisconsin Act 188] Section 233 (1) This act first applies to transfers
10 relating to deaths occurring on January 1, 1999, except with respect to that this act
11 does not apply to transfers under irrevocable governing instruments executed before
12 that date. ✓

13 **SECTION 212. Initial applicability.**

14 (1) The treatment of sections 40.02 (8) (a) 2., 705.06 (1) (c) and (2), 705.27,
15 852.12, 854.08 (6) (a) 1. and 2., 854.115, 854.12, 861.31 (1m), (2), and (4) (intro.) and
16 (a), 861.33 (1) (a) (intro.) and (b), (2), (3), and (4), 861.35 (1m) (intro.), (1m) (a), (b),
17 and (c), (2), (3) (a), and (4) (intro.) and (a), 863.15, 863.16, and 863.19 of the statutes,
18 the renumbering and amendment of sections 705.04 (2), 852.01 (1) (a) 2., and 854.08
19 (5) of the statutes, and the creation of sections 705.04 (2) (a) and (d), 852.01 (1) (a)
20 2. b., and 854.08 (5) (a) and (d) of the statutes first apply to transfers related to deaths
21 occurring on the effective date of this subsection but do not apply to transfers under
22 irrevocable governing instruments executed before that date.

23 (END)

that were irrevocable

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0135/P2ins
CMH:jld:pg

1 Insert 36-3

2
3 **SECTION 1.** 854.13 (2) (h) of the statutes is amended to read:

4 854.13 (2) (h) *After death.* A person's right to disclaim survives the person's
5 death and may be exercised by the person's personal representative or special
6 administrator upon receiving approval from the court having jurisdiction of the
7 person's estate after hearing upon notice to all persons interested in the disclaimed
8 property, if the personal representative or special administrator has not taken any
9 action which would bar the right to disclaim under sub. ~~(11)~~ (11g).

10 History: 1977 c. 309; 1983 a. 189 s. 329 (26); 1991 a. 39, 301; 1995 a. 360; 1997 a. 188 ss. 22 to 59, 175; Stats. 1997 s. 854.13.

11 Insert 37-19

12 **SECTION 2.** 854.13 (11) (title) of the statutes is repealed.

13 **SECTION 3.** 854.13 (11) (a) of the statutes is renumbered 854.13 (11g), and
14 854.13 (11g) ^{title} ~~(intro)~~ and ^(a) ~~1~~, as renumbered, are amended to read:

15 854.13 (11g) ^(title) ~~ACTIONS THAT BAR DISCLAIMER~~ ^(intro) A person's right to
16 disclaim property is barred by any of the following:

17 ~~(a)~~ (a) The person's assignment, conveyance, encumbrance, pledge, or transfer of
18 the property or a contract therefor for the assignment, conveyance, encumbrance,
19 pledge, or transfer of the property.

20 History: 1977 c. 309; 1983 a. 189 s. 329 (26); 1991 a. 39, 301; 1995 a. 360; 1997 a. 188 ss. 22 to 59, 175; Stats. 1997 s. 854.13.

21 **SECTION 4.** 854.13 (11) (b) of the statutes is renumbered 854.13 (11m) and is
amended to read:

, and 854.13 (11m) (title), as
renumbered,

(title)

1 854.13 (11m) EFFECT UPON ON DISCLAIMANT AND SUCCESSORS IN INTEREST. ~~The~~
2 disclaimer or the written waiver of the right to disclaim is binding upon the
3 disclaimant or person waiving and all persons claiming through or under him or her

4 History: 1977 c. 309; 1983 a. 189 s. 329 (26); 1991 a. 39, 301; 1995 a. 360; 1997 a. 188 ss. 22 to 59, 175; Stats. 1997 s. 854.13.

5
6 Insert 44-3

***NOTE: By "this section or any of its subparts," I think you meant that the section parts were severable and that a contrary intent to one part would not invalidate the other parts. Is this language okay? See sections 854.05 (6), 854.05 (5), 854.06 (4), 854.07 (4), 854.11 (4), 854.21 (7), and 854.22 (4); if you change this language, will any contrary intent in those sections negate the entire section?

invalidate

NO
But language that is similar to the
old language remains throughout ch. 854,
and probably elsewhere. If you change
the language here to clarify the meaning,
should you review the other instances
too?

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0135/P2dn

CMH::

jd

*The next version of this draft
will include
statements of intent in both the
analysis and the relating clause
per Professor
Howie Erlanger.*

As Liz Heiner noted in her memo, the issues raised in the p1 drafter's note may still be relevant.

This draft is still a preliminary draft; it will have to be redrafted to be introducible.
Please see the embedded notes in the draft.

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0135/P2dn
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November 4, 2004

The next version of this draft will include statements of intent in both the analysis and the relating clause per Professor Howie Erlanger.

This draft is still a preliminary draft; it will have to be redrafted to be introducible. Please see the embedded notes in the draft.

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